



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
FREEDOM OF INFORMATION ACT BRANCH  
Washington, D.C. 20570

Via email

October 20, 2022

Re: FOIA Request NLRB-2022-001495 (First Interim Release)

Dear Andrew Lyubarsky (AFL-CIO):

This is the first interim release in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on July 7, 2022, where you requested over 40 itemized categories of records, information, and data about representation and unfair labor practice cases because “[t]he NLRB has declared ... that it will be revising the representation election procedures located at 29 CFR part 103,” including “procedures governing blocking charges.” As part of your request, you sought a fee waiver, asserting that the requested information concerns the Agency’s “recently announced rulemaking agenda” and will be used to provide input to the Board as it “considers and determines the appropriate standards and procedures to apply to blocking charges.”

We acknowledged your request on July 7, 2022. Your request for a fee waiver has been granted.

In a telephone conversation with two members of my staff on August 3, 2022, it was explained that numerous queries would have to be designed to retrieve the responsive data sets from the Agency’s current electronic casehandling system and that FOIA Branch staff would then have to review the returned data sets to independently compile and format that data into responsive Excel spreadsheets. In a subsequent email, you were informed that the FOIA’s statutory extension of time to respond would be taken due to our need to consult with and search in two or more Agency offices, as well as need to search for, collect, and examine voluminous amounts of information.

Pursuant to the FOIA, search queries for responsive data were conducted in our current electronic handling system, NxGen. As a result of these searches, we are providing you with three Excel spreadsheets containing data responsive to your request:

- “NLRB-2022-001495 RC RD RM cases w blocking-suspension 10-1-2019 to 7-31-2022.xlsx” (**R-Case Report**);

- “NLRB-2022-001495 C case data 10-1-2019 to 7-31-2022.xlsx” (**C-Case Report**);
- “NLRB-2022-001495 Detailed Election Data cases filed 10-1-19 to 7-31-2022.xlsx” (**Election Report**).

The attached Excel spreadsheets are compilations of data manually entered by regional staff and, as such, reflect the best available data that can be readily compiled about representation and unfair labor practice cases as of the date the search queries were ran. Additionally, please note there are two separate tabs of information in each of the attached spreadsheets. The first tab contains information for the time period of October 1, 2019 through May 31, 2020, and the second tab contains information for the time period of June 1, 2020 through July 31, 2022.<sup>1</sup>

As explained in more detail below, this first response addresses Request Items 1(a) - 1(j), 2(a) - 2(l), 3(a) - 3(h), 4(a) - 4(g), and 8.

With respect to Request Item 1 (Blocking Charges Generally), the spreadsheets respond to the listed subparts as follows:

- *Request Item 1(a)* seeks information about the number of unfair labor practice charges filed together with a request to block an election. To the extent information responsive to 1(a) is tracked by the Agency, it can be found in one of two places. First, you can look in the **R-Case Report** and scroll to columns Y, Z, and AF. Filtering on these columns will provide you with information on representation cases that may have been blocked and the associated blocking charge (C-case) number. Second, you may find additional information on blocking charge cases in the **C-Case Report**. In this spreadsheet, you will navigate to column U and filter for any R-cases listed in that column as these cases may indicate instances where a blocking request was filed.
- *Request Item 1(b)* seeks the case numbers assigned to the charge and associated representation case. As explained above, this information can be found in both the **R-Case Report** and **C-Case Report**.
- *Request Item 1(c)* seeks the nature of the charge. Once you have located a potential blocking charge case number via the filtering suggested above in Request Item 1(a), you can conduct a search in the **C-Case Report** for the “NLRA Section” (Column H) and/or “Allegation Name” (Column I). These fields provide a description of the nature of the charge allegations.

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<sup>1</sup> This second period represents the time since the effective date of the last amendment to the representation case procedures.

- *Request Item 1(d)* seeks information on whether the charge was classified by the Regional Director under 29 C.F.R. § 103.20(b) or (c) or a merit-determination dismissal case, which the Agency does not specifically track. However, this information may be noted as a comment in column AG of the **R-Case Report**. Additionally, you can filter column M of the **C-Case Report** to identify cases where a merit-determination dismissal was issued.
- *Request Item 1(e)* seeks information pertaining to the disposition of the blocking charge and the time required to reach that disposition. Once you have located a potential blocking charge case number via the filtering suggested above in Request Item 1(a), you can determine this information by navigating to “Complaint Date” (Column N), “Closed Date” (Column O), and “Closed Reason” (Column P) in the **C-Case Report**. A date will be entered in Column N if a complaint was issued.
- *Request Item 1(f)* seeks information on blocking charges related to representation cases in which the election results were certified. Again, once you have located the case numbers of a potential blocking charge and its associated representation case via the filtering suggested above in Request Item 1(a), you can determine this information by using the associated representation case number and then navigating to “Closed Reason” (Column G) of the **R-Case Report**. This field will tell you if the representation case resulted in a certification. However, the Agency does not track, and therefore there is no specific record or field that could be queried for the explanation of why a charge did not result in a petition being dismissed.
- *Request Item 1(g)* seeks the length of time between the filing of the petition and the certification of results in the associated representation case. This information can be calculated for any representation case by using the “Petition Filed Date” (Column E) and “Closed Date” (Column F) of the **R-Case Report**.
- *Request Item 1(h)* seeks the outcome of the election in the associated representation case if the election results were ultimately certified. Again, information about the outcome of a representation case can be found by navigating to “Closed Reason” (Column G) of the **R-Case Report** and **Election Report**. You can find additional election details (including number of votes and unit certified) from the **Election Report**.
- *Request Item 1(i)* seeks information about instances where the election results were not certified in the associated representation case, including the reason why the election results were not certified. Whether or not a case was certified can be found by navigating to “Closed Reason”

(Column G) of the **R-Case Report** and **Election Report**. However, the Agency does not specifically track the reason why a case was not certified.

- *Request Item 1(j)* seeks information about the type of petition at issue in the associated representation proceeding. This information is evident from the case number of the associated representation matter, but can also be located in the “Case Type” (Column C) and “Case Number” (Column D) fields of the **R-Case Report**

With respect to Request Item 2 (Blocking Charges Leading to the Impounding of Ballots), the spreadsheets respond to the listed subparts as follows:

- *Request Item 2(a)* seeks information about the number of blocking charges that resulted in election ballots being impounded. Once you have located a potential blocking charge case number and its associated representation case via the filtering suggested above in Request Item 1(a), you can determine this information by using the associated representation case number and then navigating to “Impounded Ballots” (Column T) of the **Election Report**. This field will tell you if ballots were impounded in a case.
- *Request Item 2(b)* seeks the case numbers assigned to the charge and associated representation case. This information can be found in both the **R-Case Report** and **C-Case Report**.
- *Request Item 2(c)* seeks the nature of the charge. Once you have located a potential blocking charge case number via the filtering suggested above in Request Item 2(a), you can conduct a search in the **C-Case Report** for the “NLRA Section” (Column H) and/or “Allegation Name” (Column I). These fields provide a description of the nature of the charge allegations.
- *Request Item 2(d)* seeks the basis of the decision to impound the ballots in the associated representation case, which the Agency does not specifically track. However, responsive information may be located on the relevant case page of the Agency’s website. Please visit <https://www.nlr.gov/search/case>. Once there, enter the associated representation case number in the search box to view its case page for any publicly available records that may be responsive.
- *Request Item 2(e)* seeks the length of time that ballots in the associated representation case remained impounded, which the Agency does not specifically track.

- *Request Item 2(f)* seeks information pertaining to the disposition of the blocking charge and the time required to reach that disposition. Once you have located a potential blocking charge case number via the filtering suggested above in Request Item 2(a), you can determine this information by navigating to “Complaint Date” (Column N), “Closed Date” (Column O), and “Closed Reason” (Column P) in the **C-Case Report**. A date will be entered in Column N if a complaint was issued.
- *Request Item 2(g)* seeks information about the reason why impounded ballots were never counted, which the Agency does not specifically track.
- *Request Item 2(h)* seeks information about the reason why impounded ballots were counted, which the Agency does not specifically track.
- *Request Item 2(i)* seeks information about whether impounded ballots were counted for a specific reason (for example, because complaint did not issue within 60 days), which the Agency does not specifically track.
- *Request Item 2(j)* seeks information about determinations made by the Regional Director or the Board pursuant to 29 C.F.R. § 103.20(d) and the related sections of the Casehandling Manual, which the Agency does not specifically track.
- *Request item 2(k)* seeks the outcome of the election in the associated representation case if the election results were ultimately certified. Information about the outcome of a representation case can be found by navigating to “Closed Reason” (Column G) of the **R-Case Report** and **Election Report**. You can find additional election details (including number of votes and unit certified) from the **Election Report**.
- *Request item 2(l)* seeks information about the type of petition at issue in the associated representation proceeding. This information is evident from the case number of the associated representation matter but can also be located in the “Case Type” (Column C) and “Case Number” (Column D) fields of the **R-Case Report**.

With respect to Request Item 3 (Blocking Charges Leading to the Immediate Counting of Ballots), the spreadsheets respond to the listed subparts as follows:

- *Request Item 3(a)* seeks information on the number of blocking charges that resulted in election ballots being counted at the conclusion of the election pursuant to 29 C.F.R. § 103.20(b) and the related sections of the Casehandling Manual, which the Agency does not specifically track. However, this information may be noted as a comment in column AG of the **R-Case Report**.

- *Request Item 3(b)* seeks the case numbers assigned to the charge and associated representation case. This information can be found in both the **R-Case Report** and **C-Case Report**.
- *Request Item 3(c)* seeks the nature of the charge. Once you have located a potential blocking charge case number via the search suggested above in Request Item 3(a), you can conduct a search in the **C-Case Report** for the “NLRA Section” (Column H) and/or “Allegation Name” (Column I). These fields provide a description of the nature of the charge allegations.
- *Request Item 3(d)* seeks the basis of the decision not to impound the ballots in the associated representation case, which the Agency does not specifically track. However, responsive information may be located on the relevant case page of the Agency’s website. Please visit <https://www.nlr.gov/search/case>. Once there, enter the associated representation case number in the search box to view its case page for any publicly available records that may be responsive.
- *Request Item 3(e)* seeks information pertaining to the disposition of the blocking charge and the time required to reach that disposition. Once you have located a potential blocking charge case number via the search suggested above in Request Item 3(a), you can determine this information by navigating to “Complaint Date” (Column N), “Closed Date” (Column O), and “Closed Reason” (Column P) in the **C-Case Report**. A date will be entered in Column N if a complaint was issued.
- *Request Item 3(f)* seeks information about determinations made by the Regional Director or the Board pursuant to 29 C.F.R. § 103.20(d) and the related sections of the Casehandling Manual, which the Agency does not specifically track.
- *Request Item 3(g)* seeks the outcome of the election in the associated representation case if the election results were ultimately certified. Information about the outcome of a representation case can be found by navigating to “Closed Reason” (Column G) of the **R-Case Report** and **Election Report**. You can find additional election details (including number of votes and unit certified) from the **Election Report**.
- *Request Item 3(h)* seeks information about the type of petition at issue in the associated representation proceeding. This information is evident from the case number of the associated representation matter but can also be located in the “Case Type” (Column C) and “Case Number” (Column D) fields of the **R-Case Report**.

With respect to Request Item 4 (Merit Determination Dismissals), the spreadsheets respond to the listed subparts as follows:

- *Request Item 4(a)* seeks information on the number of blocking charges that resulted in the election petition being dismissed pursuant to the rule described in *Rieth-Riley Construction Co.*, 371 NLRB No. 109 (2022), which the Agency does not specifically track. However, once you have located a potential blocking charge case number and its associated representation case via the filtering suggested above in Request item 1(a), you can determine whether the representation case was dismissed by navigating to “Closed Reason” (Column G) of the **R-Case Report** and **Election Report**. Additional responsive information (including the reason for dismissal of a petition) may be located on the relevant case page of the Agency’s website. Please visit <https://www.nlr.gov/search/case>. Once there, enter the associated representation case number in the search box to view its case page for any publicly available records (including RD Orders) that may be responsive.
- *Request Item 4(b)* seeks the case numbers assigned to the blocking charge and associated representation case. This information can be found in both the **R-Case Report** and **C-Case Report**.
- *Request Item 4(c)* seeks the nature of the blocking charge. Once you have located a potential blocking charge case number via the search suggested above in Request item 4(a), you can conduct a search in the **C-Case Report** for the “NLRA Section” (Column H) and/or “Allegation Name” (Column I). These fields provide a description of the nature of the charge allegations.
- *Request Item 4(d)* seeks the basis of the decision to dismiss the petition in the related representation case, which the Agency does not specifically track. However, responsive information may be located on the relevant case page of the Agency’s website. Please visit <https://www.nlr.gov/search/case>. Once there, enter the associated representation case number in the search box to view its case page for any publicly available records (including RD Orders) that may be responsive.
- *Request Item 4(e)* seeks information pertaining to the disposition of the blocking charge and the time required to reach that disposition. Once you have located a potential blocking charge case number via the search suggested in Request Item 4(a), you can determine this information by navigating to “Complaint Date” (Column N), “Closed Date” (Column O), and “Closed Reason” (Column P) in the **C-Case Report**. A date will be entered in Column N if a complaint was issued.

- *Request Item 4(f)* seeks information about determinations made by the Regional Director or the Board pursuant to 29 C.F.R. § 103.20(d) and the related sections of the Casehandling Manual, which the Agency does not specifically track.
- *Request item 4(g)* seeks information about the type of petition at issue in the associated representation proceeding. This information is evident from the case number of representation matter but can also be located in the “Case Type” (Column C) and “Case Number” (Column D) fields of the **R-Case Report**.

Please note the queries returned certain information that falls under the deliberative process and attorney-work product privileges of FOIA Exemption 5, 5 U.S.C. § 552 (b)(5). Specifically, there was some limited deliberative and preliminary discussion about casehandling contained in column AG of the **R-Case Report** that has been removed from the spreadsheet and is being withheld pursuant to both of these privileges, which protect the mental impressions of Board Agents as well as advice, recommendations, and opinions that are part of the Agency’s deliberative and decision-making processes.

With respect to Request Item 8 seeking any documents responsive to requests 1-15 in your prior FOIA Request (NLRB-2019-001262) relating to “the period after that covered in your response to that request and before the effective date of the last amendments of 29 CFR § 103.20,” I am also providing responsive data. As explained above, each of the attached Excel spreadsheets has a separate tab for the time period of October 1, 2019 through May 31, 2020. These tabs will contain updated data responsive to items 1, 2, 7, 8, 9, 10, 11, 12, 13, and 14 of that previous request.

Regarding the assessment of fees for this request, your request for a fee waiver has been granted. Accordingly, there is no charge for this request in these circumstances.

Finally, please be advised that with my decision to respond to your request by providing data and information through rolling, interim releases, there will be additional responses to the remaining request items as our processing continues. We will include your appeal rights with each response, but we ask, in the interests of efficiency, avoiding piecemeal appeals, and saving resources of your organization and the government, that you consider holding any potential administrative appeal until you receive our final determination letter. See NLRB Rules and Regulations, 29 C.F.R. 102.117(c)(2)(v).

Your request is being processed by FOIA Specialist Jodi Breirather and FOIA Attorney Marissa Wagner. You may contact Jodi Breirather at (414) 930-7208 or



by email at Jodilyn.Breirather@nrlb.gov, or Marissa Wagner at (202) 273-2957 or by email at Marissa.Wagner@nrlb.gov, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the FOIA Specialist or Attorney, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the FOIA Public Liaison is:

Kristine M. Minami  
FOIA Public Liaison  
National Labor Relations Board  
1015 Half Street, S.E., 4<sup>th</sup> Floor  
Washington, D.C. 20570  
Email: FOIAPublicLiaison@nrlb.gov  
Telephone: (202) 273-0902  
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001  
Email: ogis@nara.gov  
Telephone: (202) 741-5770  
Toll free: (877) 684-6448  
Fax: (202) 741-5769

As noted above, you may obtain a review of this first response to your request under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt  
Chief FOIA Officer  
National Labor Relations Board  
1015 Half Street, S.E., 4<sup>th</sup> Floor  
Washington, D.C. 20570  
Email: DLCFOIAAppeal@nrlb.gov

Any appeal must be postmarked or electronically submitted within 90 calendar days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the FOIA Specialist, Attorney-Advisor, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

*/s/ Synta E. Keeling*

Synta E. Keeling  
FOIA Officer

Attachment: (three Excel spreadsheets)